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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANGELA PITTARD, on behalf of herself,
and on behalf of all persons similarly situated,

Plaintiffs,

vs.

ORANGE COUNTY HOMECARE, a
California limited liability corporation, doing
business as SALUS HOMECARE and
SALUS HEALTHCARE; and, Does 1 to 10,

Defendants.

FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ORIGINAL

BY CNH DEPUTY

CASE No. **08 CV 1398 J WMC**

CLASS AND COLLECTIVE ACTION
COMPLAINT FOR:

1. FAILURE TO PAY COMPENSATION IN
VIOLATION OF 29 U.S.C. § 201, *et seq.*;

2. FAILURE TO PAY WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510,
515, 551, 552, 1182, 1194, 1197 AND 1198,
et seq.;

3. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE
§ 203;

4. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF CAL. LAB. CODE § 226;

5. FAILURE TO PROVIDE MEAL AND
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE § 226.7 AND 512;

6. FAILURE TO INDEMNIFY IN
VIOLATION OF CAL. LAB. CODE § 2802;

7. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200, *et seq.*; and

DEMAND FOR A JURY TRIAL

CR

1 Plaintiff Angela Pittard alleges on information and belief, except for her own acts and
2 knowledge, the following:

3 **NATURE OF THE ACTION**

4 1. Plaintiff Angela Pittard ("PLAINTIFF") brings this class action on behalf of
5 herself and all individuals who are or previously were employed by Defendant ORANGE COUNTY
6 HOMECARE, a California limited liability corporation, doing business as SALUS HOMECARE
7 and SALUS HEALTHCARE (hereinafter referred to as "DEFENDANTS") as Caregivers and other
8 similarly situated positions in California during the period four (4) years prior to the filing of this
9 Complaint, who were classified by Defendant as exempt, and who have been or may be subject to
10 the challenged exemption classification policies and practices used by Defendant (the "CLASS").

11 2. Individuals in this position of Caregiver with DEFENDANTS are and were
12 employees entitled to be classified as non-exempt, entitled to be paid overtime compensation,
13 entitled to be provided with meal and rest breaks, and entitled to prompt payment of all amounts due
14 and unpaid owing upon leaving employment.

15 3. Although DEFENDANTS require their employees employed as Caregivers to work
16 more than eight (8) hours a day, more than forty (40) hours a week, and work hours on the seventh
17 (7th) consecutive day of a work week, as a matter of policy and practice, DEFENDANTS
18 consistently and uniformly failed to properly classify these employees, and through such practice,
19 failed to record and pay such employees for overtime hours worked, denying them the compensation
20 that the law requires.

21 4. PLAINTIFF, on behalf of herself and the CLASS of Caregivers similarly situated,
22 seeks to have all such employees reclassified and recover all the compensation that DEFENDANTS
23 were required by law to provide, but failed to provide, to PLAINTIFF and all other CLASS
24 members, including overtime compensation, compensation for missed meal and rest breaks,
25 compensation for amounts not paid upon leaving employment and such other and further
26 compensation, penalties, and interest as shall be determined.

JURISDICTION AND VENUE

5. This Court has jurisdiction over PLAINTIFF'S federal claim pursuant to 28 U.S.C. §1331, federal question jurisdiction, 29 U.S.C. § 219, the Fair Labor Standards Act, and 28 U.S.C. § 1367, supplemental jurisdiction of state law claims.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c), because DEFENDANTS do substantial business in this District and committed the wrongful conduct against certain members of the CLASS in San Diego County, California.

PARTIES

7. Plaintiff Angela Pittard ("PLAINTIFF") has been employed by DEFENDANTS since July of 2006 in the state of California in the position of "Caregiver."

8. DEFENDANTS conducted and continue to conduct substantial and regular business in San Diego County, California, and throughout California. DEFENDANTS also conduct business throughout the United States and are an enterprise engaged in commerce within the meaning of the Fair Labor Standards Act by regularly and recurrently receiving or transmitting interstate communications.

9. The Defendants named in this Complaint, and Does 1 through 10, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendant and each Defendant was acting within the course of scope of his, her or its authority as the agent, servant and/or employee of each of the other Defendant (the "DEFENDANTS"). Consequently, all the DEFENDANTS are jointly and severally liable to the PLAINTIFF and the other members of the CLASS, for the losses sustained as a proximate result of DEFENDANTS' conduct.

COLLECTIVE ACTION UNDER THE FLSA

10. PLAINTIFF brings this lawsuit as a collective action under the Fair Labor and Standards Act, 29 U.S.C. § 201, *et seq.* (the "FLSA"), on behalf of all persons who were, are, or will

1 be employed by DEFENDANTS as Caregivers, or in other substantially similar positions during the
2 period commencing four years prior to the filing of this Complaint and ending on the date as the
3 Court shall determine (the "COLLECTIVE CLASS PERIOD"), who performed work in excess of
4 forty (40) hours in one week and did not receive overtime compensation as required by the FLSA
5 (the "COLLECTIVE CLASS"). To the extent equitable tolling operates to toll claims by the
6 COLLECTIVE CLASS against the DEFENDANTS, the COLLECTIVE CLASS PERIOD should be
7 adjusted accordingly. The COLLECTIVE CLASS includes all such persons, whether or not they
8 were paid by commission, by salary, or by part commission and part salary.

9 11. Questions of law and fact common to the COLLECTIVE CLASS as a whole, but not
10 limited to the following, include:

- 11 a. Whether DEFENDANTS misclassified PLAINTIFF and members of the
12 COLLECTIVE CLASS as exempt from receiving compensation for all hours
13 worked, including federal overtime compensation;
14 b. Whether DEFENDANTS failed to adequately compensate the members
15 of the COLLECTIVE CLASS for all hours worked as required by the FLSA,
16 including the time worked through their meal periods;
17 c. Whether DEFENDANTS should be enjoined from continuing the practices which
18 violate the FLSA; and,
19 d. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

20 12. The first cause of action for the violations of the FLSA may be brought and
21 maintained as an "opt-in" collective action pursuant to Section 16(b) of FLSA, 29 U.S.C. 216(b), for
22 all claims asserted by the representative PLAINTIFF of the COLLECTIVE CLASS because the
23 claims of the PLAINTIFF are similar to the claims of the members of the prospective
24 COLLECTIVE CLASS.

25 13. PLAINTIFF and the COLLECTIVE CLASS are similarly situated,
26 have substantially similar job requirements and pay provisions, and are subject to DEFENDANTS'
27 common and uniform policy and practice of misclassifying their employees, failing to pay for all
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1 actual time worked and wages earned, and failing to accurately record all hours worked by these
2 employees in violation of the FLSA and the Regulations implementing the Act as enacted by the
3 Secretary of Labor (the "REGULATIONS").

4
5 **CLASS ACTION ALLEGATIONS**

6 14. PLAINTIFF brings this action on behalf of herself in her individual
7 capacity and also on behalf of a California Class of all employees of DEFENDANTS in California
8 who were, are, or will be employed as Caregivers, or in other substantially similar positions during
9 the period commencing four years prior to the filing of this Complaint and ending on the date of
10 judgment (the "CALIFORNIA CLASS PERIOD"), who performed work in excess of eight (8)
11 hours in one day and/or forty (40) hours in one week and/or hours on the seventh (7th) consecutive
12 day of a workweek and did not receive overtime compensation as required by Labor Code Section
13 510 and Wage Order 15-2001. This class is hereinafter referred to as the "CALIFORNIA CLASS."
14 The CALIFORNIA CLASS includes all such persons, whether or not they were paid by
15 commission, by salary, or by part commission and part salary.

16 15. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in
17 violation of the applicable California Labor Code ("Labor Code") and Industrial Welfare
18 Commission ("IWC") Wage Order Requirements intentionally, knowingly, and systematically
19 misclassified the PLAINTIFF and the other members of the CALIFORNIA CLASS as exempt from
20 receiving compensation for all hours worked and other labor laws in order to avoid the payment of
21 wages due for hours worked by misclassifying their positions as exempt. To the extent equitable
22 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the
23 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

24 16. DEFENDANTS violated the rights of the CALIFORNIA CLASS under California
25 law by:

- 26 (a) Committing an act of unfair competition in violation of the California Labor
27 Code, by failing to pay PLAINTIFF and the members of the CALIFORNIA
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1 CLASS all wages and compensation due for all hours worked in a work
2 week.

3 (b) Violating California law, including Cal. Labor Code § 204, by failing to pay
4 PLAINTIFF and the members of the CALIFORNIA CLASS pay for all work
5 hours for which DEFENDANTS are liable pursuant to Cal. Lab. Code §
6 1194.

7 (c) Violating the Wage Order and California Code of Regulations § 11150 by
8 misclassifying PLAINTIFF and the members of the CALIFORNIA CLASS as
9 exempt and failing to provide overtime compensation for all hours worked
10 excess of eight (8) hours in a day, forty (40) in a week, or for hours worked
11 on the seventh (7th) consecutive workday day.

12 (e) Violating Cal. Lab. Code § 203, which provides that when an employee is
13 discharged or quits from employment, the employer must pay the employee
14 all wages due without abatement, by failing to tender full payment and/or
15 restitution of wages owed or in the manner required by California law to the
16 PLAINTIFF and the members of the CALIFORNIA CLASS who have
17 terminated their employment. Thus, DEFENDANTS are liable for such
18 wages for a period of thirty (30) days following the termination of such
19 employment.

20 (f) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
21 members of the CALIFORNIA CLASS with an accurate itemized statement
22 in writing showing the total hours worked by the employee.

23 (g) Violating the Wage Order and California Code of Regulations § 11150,
24 subsection 7, by failing to maintain accurate records of time and hours
25 worked in the payroll period and failing to make such information available
26 to employees.

27 (h) Violating Cal. Lab. Code §§ 1198 and 226.7 and the regulations and orders
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1 implementing the Code, by failing to provide PLAINTIFF and the members
2 of the CALIFORNIA CLASS with meal periods and are thus liable for
3 premium pay of one hour for each workday such meal periods were denied.

4 17. This Class Action meets the statutory prerequisites for the maintenance of a Class
5 Action as set forth in Rule 23 of the Federal Rules of Civil Procedure ("F.R.C.P."), in that:

- 6 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that
7 the joinder of all such persons is impracticable and the disposition of their
8 claims as a class will benefit the parties and the Court;
- 9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
10 are raised in this Complaint are common to the CALIFORNIA CLASS and
11 will apply uniformly to every member of the CALIFORNIA CLASS;
- 12 (c) The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFF, like all other members
14 of the CALIFORNIA CLASS, was systematically misclassified as exempt
15 from receiving compensation for all hours worked and sustained economic
16 injuries arising from DEFENDANTS' violations of the laws of California.
17 PLAINTIFF and the members of the CALIFORNIA CLASS are similarly or
18 identically harmed by the same unlawful, deceptive, unfair and pervasive
19 pattern of misconduct engaged in by the DEFENDANTS of systematically
20 misclassifying as exempt all Caregivers from receiving compensation for all
21 hours worked.
- 22 (d) The representative PLAINTIFF will fairly and adequately represent and
23 protect the interest of the CALIFORNIA CLASS, and has retained counsel
24 who are competent and experienced in Class Action litigation. There are no
25 material conflicts between the claims of the representative PLAINTIFF and
26 the members of the CALIFORNIA CLASS that would make class
27 certification inappropriate. Counsel for the CALIFORNIA CLASS will
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1 vigorously assert the claims of all Class Members.

2 18. In addition to meeting the statutory prerequisites to a Class Action, this action is
3 properly maintained as a Class Action pursuant to F.R.C.P. 23, in that:

4 (a) Without class certification and determination of declaratory, injunctive,
5 statutory and other legal questions within the class format, prosecution of
6 separate actions by individual members of the CALIFORNIA CLASS will
7 create the risk of:

- 8 1) Inconsistent or varying adjudications with respect to individual
9 members of the CALIFORNIA CLASS which would establish
10 incompatible standards of conduct for the parties opposing the
11 CALIFORNIA CLASS; or,
12 2) Adjudication with respect to individual members of the
13 CALIFORNIA CLASS which would as a practical matter be
14 dispositive of interests of the other members not party to the
15 adjudication or substantially impair or impede their ability to protect
16 their interests.

17 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
18 generally applicable to the CALIFORNIA CLASS, making appropriate class-
19 wide relief with respect to the CALIFORNIA CLASS as a whole in that the
20 DEFENDANTS systematically misclassified all Caregivers as exempt from
21 receiving compensation for all hours worked;

22 (c) Common questions of law and fact exist as to the members of the
23 CALIFORNIA CLASS and predominate over any question affecting only
24 individual members, and a Class Action is superior to other available
25 methods for the fair and efficient adjudication of the controversy, including
26 consideration of:

- 27 1) The interests of the members of the CALIFORNIA CLASS in
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1 individually controlling the prosecution or defense of separate actions;

2 2) The extent and nature of any litigation concerning the controversy
3 already commenced by or against members of the CALIFORNIA
4 CLASS;

5 3) The desirability or undesirability of concentrating the litigation of the
6 claims in the particular forum;

7 4) The difficulties likely to be encountered in the management of a Class
8 Action; and,

9 5) The basis of DEFENDANTS misclassifying PLAINTIFF and the
10 CALIFORNIA CLASS as exempt from receiving overtime
11 compensation.

12 19. This Court should permit this action to be maintained as a Class Action pursuant to
13 F.R.C.P. 23 because:

14 (a) The questions of law and fact common to the CALIFORNIA CLASS
15 predominate over any question affecting only individual members;

16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the CALIFORNIA
18 CLASS;

19 (c) The members of the CALIFORNIA CLASS are so numerous that it is
20 impractical to bring all members of the CALIFORNIA CLASS before the
21 Court;

22 (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able
23 to obtain effective and economic legal redress unless the action is maintained
24 as a Class Action;

25 (e) There is a community of interest in obtaining appropriate legal and equitable
26 relief for the common law and statutory violations and other improprieties,
27 and in obtaining adequate compensation for the damages and injuries which
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1 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;

2 (f) There is a community of interest in ensuring that the combined assets and
3 available insurance of DEFENDANTS are sufficient to adequately
4 compensate the members of the CALIFORNIA CLASS for the injuries
5 sustained;

6 (g) DEFENDANTS have acted or refused to act on grounds generally applicable
7 to the CALIFORNIA CLASS, thereby making final class-wide relief
8 appropriate with respect to the CALIFORNIA CLASS as a whole; and

9 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
10 business records of the DEFENDANTS. The CALIFORNIA CLASS
11 consists of all of DEFENDANTS' employees employed as Caregivers in
12 California who were classified as exempt from receiving wages for all hours
13 worked. DEFENDANTS, as a matter of law, has the burden of proving the
14 basis for the exemption as to each and every Caregiver so classified. To the
15 extent that DEFENDANTS have failed to maintain records sufficient to
16 establish the basis for the exemption (including but not limited to, the
17 employee's job duties, wages, and hours worked) for any Caregiver,
18 DEFENDANTS are estopped, as a matter of law, to assert the existence of
19 the exemption.

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21 **GENERAL ALLEGATIONS**

22 20. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in
23 violation of the applicable California Labor Code ("Labor Code"), Industrial Welfare Commission
24 ("IWC") Wage Order Requirements, and the applicable provisions of the FLSA, intentionally,
25 knowingly, and wilfully, on the basis of job title alone and without regard to the actual overall
26 requirements of the job or compensation paid, systematically misclassified the PLAINTIFF and the
27 other members of the CALIFORNIA CLASS and the COLLECTIVE CLASS (the "CLASS") as

1 exempt from receiving overtime wages. This practice of DEFENDANTS was intended to
2 purposefully avoid the payment of earned wages by misclassifying the PLAINTIFF and other
3 Caregivers similarly situated as exempt. To the extent equitable tolling operates to toll claims by
4 the CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD and the COLLECTIVE
5 CLASS PERIOD (the "CLASS PERIODS") should be adjusted accordingly.

6 21. DEFENDANTS have intentionally and deliberately created numerous job levels and
7 a multitude of job titles to create the superficial appearance of hundreds of unique jobs, when in
8 fact, these jobs are substantially similar and can be easily grouped together for the purpose of
9 determining whether they are entitled to wages for hours worked and whether DEFENDANTS were
10 required to maintain accurate time and hour records. DEFENDANTS have uniformly misclassified
11 these CLASS members as exempt and denied them wages and other benefits to which they are
12 entitled in order to unfairly cheat the competition and unlawfully profit.

13 22. DEFENDANTS maintain records from which the Court can ascertain and identify
14 each of DEFENDANTS' employees who as CLASS members, have been systematically,
15 intentionally and uniformly misclassified as exempt from receiving wages for all hours worked as a
16 matter of DEFENDANTS' corporate policy, practice and procedure. To the extent DEFENDANTS'
17 have assigned job titles, other than Caregiver to employees subjected to the practices herein alleged,
18 PLAINTIFF will seek leave to amend the complaint to include any additional job titles when they
19 have been identified.

20 21 THE CONDUCT

22 23. PLAINTIFF was hired by DEFENDANTS and placed into the job title of
23 "Caregiver." PLAINTIFF functions as a working member on the production side of the household
24 occupation business for DEFENDANTS. The job duties of PLAINTIFF and the Caregivers are to
25 perform manual labor related to the care of persons who are clients of DEFENDANTS and to
26 perform maintenance of the client's private household and premises as set forth on Exhibit 1,
27 attached hereto and incorporated by this reference herein. The PLAINTIFF and the Caregivers did
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1 not live in the client's private household. Rather, the PLAINTIFF and the Caregivers commuted
2 from their own homes to the household of the client to perform household labor. The household
3 labor performed by the Caregivers is the product that DEFENDANTS deliver to the customers.

4 24. On a weekly basis, substantially more than twenty percent (20%) of the time of
5 Plaintiff and the other members of the CLASS was spent during the Class Period performing
6 general housekeeping duties as a domestic servant, as outline in Exhibit #1, separate from assisting
7 the client as a personal attendant and without the assistance of the client. As shown by Exhibit 1,
8 the PLAINTIFF and members of the CLASS are required to, without the participation of the client:
9 (a) cook breakfast, lunch and dinner; (b) run errands, which includes grocery shopping and picking
10 up prescriptions; (c) perform homemaking, which includes laundry/washing/drying/folding; (d)
11 clean the restroom, which includes the toilet, sink, bathtub/shower, emptying of the trash, and
12 sweeping/mopping the floor; (e) clean the kitchen, which includes cleaning the sink, washing the
13 dishes, wiping the counter, wiping the stove top, wiping the refrigerator, cleaning the inside of the
14 microwave, loading the dishwasher, emptying the dishwasher, sweep/mopping the floor, and
15 emptying the trash; (f) clean the living area, which includes vacuuming, dusting, changing bed
16 linens, and wiping mirrors; and (g) pet care.

17 25. In performing the conduct herein alleged, the DEFENDANTS uniformly
18 misrepresented to the PLAINTIFF and the other members of the CLASS that they were exempt
19 from overtime and the applicable state and federal labor laws, when in fact, they were not. The
20 DEFENDANTS' wrongful conduct and violations of law as herein alleged demeaned and
21 wrongfully deprived PLAINTIFF and the other members of the CLASS of the career opportunities
22 to which they were lawfully entitled. DEFENDANTS engaged in such wrongful conduct by failing
23 to have adequate employment policies and maintaining adequate employment practices consistent
24 with such policies. DEFENDANTS wrongful conduct as herein alleged converted the money
25 belonging to the PLAINTIFF and the other members of the CLASS.

26 26. In performing these routine tasks for DEFENDANTS, the members of the CLASS
27 have worked and continue to work for DEFENDANTS without being paid the requisite overtime
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1 wages for all hours worked. As a result of these rigorous demands, PLAINTIFF and other similarly
2 situated employees were also often unable to take meal and/or rest breaks due to the press of
3 DEFENDANTS' business. During the Class Period, PLAINTIFF, and the members of the CLASS
4 worked and/or still work on the production side of the DEFENDANTS' business, but are
5 nevertheless misclassified as exempt.

6 27. Neither the PLAINTIFF, nor any member of the CLASS, was primarily engaged in
7 work of a type that was or now is directly related to the DEFENDANTS' management policies or
8 general business operations, when giving these words a fair but narrow construction. Neither the
9 PLAINTIFF, nor any member of the CLASS was primarily engaged in work of a type that was or
10 now is performed at the level of the policy or management of the DEFENDANTS. To the contrary,
11 the work of DEFENDANTS' Caregivers is work wherein PLAINTIFF and members of the CLASS
12 are primarily engaged in the day to day business operations of the DEFENDANTS, to mechanically
13 provide general housekeeping services for the DEFENDANTS' clients, by performing maintenance
14 of the client's private household and premises in accordance with the established criteria of the
15 management policies and general business operations established by DEFENDANTS' management.
16 In this way, the work of PLAINTIFF and the members of the CLASS is focused solely on the
17 mechanical routine of day to day household maintenance. A Caregiver's work in performing
18 general housekeeping duties does not permit judgment or discretion that is independent, as this work
19 is performed according to DEFENDANTS' established criteria and procedures.

20 28. Considerations such as (a) DEFENDANTS' realistic expectations for the jobs titled
21 Caregiver, on the production side of the DEFENDANTS' business enterprise, and (b) the actual
22 overall requirements of the jobs titled Caregiver, are susceptible to common proof. The work that
23 PLAINTIFF and other members of the CLASS were and are primarily engaged in performing day to
24 day activities is the work that is required to be performed as part of the day to day business of
25 DEFENDANTS in providing services to the private households owned by DEFENDANTS' clients.
26 As a result, PLAINTIFF and the other members of the CLASS were and still are primarily engaged
27 in work that falls squarely on the production side of the administrative/production worker
28

1 dichotomy.

2 29. DEFENDANTS systematically misclassified as exempt PLAINTIFF and all other
3 members of the CALIFORNIA CLASS and COLLECTIVE CLASS solely on the basis of their job
4 title and without regard to DEFENDANTS' realistic expectations, the actual overall requirements of
5 the job, or the pay received by the employee. Consequently, PLAINTIFF and the other members of
6 the CALIFORNIA CLASS and COLLECTIVE CLASS were uniformly and systematically
7 exempted by DEFENDANTS from payment of wages due for hours worked during the CLASS
8 PERIOD.

9 30. Cal. Lab. Code § 515 appoints the Industrial Welfare Commission to establish
10 exemptions from the requirement that an overtime rate of compensation be paid pursuant to
11 Sections 510 and 511 for executive, administrative, and professional employees, provided that the
12 employee is primarily engaged in the duties that meet the test of the exemption, customarily and
13 regularly exercises discretion and independent judgment in performing those duties, and earns a
14 monthly salary equivalent to no less than two times the state minimum wage for full-time
15 employment. California Labor Code § 515 and Industrial Welfare Commission Wage Order 15-
16 2001 (the "Wage Order") set forth the requirements which must be satisfied in order for an
17 employee to be lawfully classified as exempt from certain provisions of the Wage Order. Although
18 wrongfully classified by DEFENDANTS as exempt from certain requirements of the Wage Order at
19 the time of hire and thereafter, PLAINTIFF, and all other members of the similarly-situated
20 CALIFORNIA CLASS, are not exempt under Industrial Welfare Commission Wage Order 15-2001
21 (the "Wage Order"), and Cal. Lab. Code § 515.

22 31. Section 13 of the FLSA and 29 Code of Federal Regulations Part 541, *et seq.*, set
23 forth the requirements which must be satisfied in order for an employee to be lawfully classified as
24 exempt. Although wrongfully classified by DEFENDANTS as exempt at the time of hire and
25 thereafter, PLAINTIFF, and all other members of the similarly-situated COLLECTIVE CLASS, are
26 not exempt under section 13 of the FLSA or the provisions of 29 C.F.R. 541, *et seq.*
27 DEFENDANTS' conduct as herein alleged was willful and not in good faith, and DEFENDANTS
28 had no reasonable grounds for believing that the alleged conduct was not a violation of the FLSA.

32. Despite the fact that PLAINTIFF, and the other members of the CLASS, regularly worked in excess of eight (8) hours a day and/or forty (40) hours per week and/or on the seventh (7th) consecutive day of a work week, they did not receive overtime wages for the overtime hours worked, and as a result suffered an economic injury.

33. Pursuant to 29 U.S.C. § 207, PLAINTIFF and other members of the COLLECTIVE CLASS, were required to be compensated for all meal breaks taken by PLAINTIFF and the other members of the COLLECTIVE CLASS where they performed duties predominantly for the benefit of the DEFENDANTS during the meal breaks. Under 29 CFR 785.19, this time spent during the lunch break is compensable because PLAINTIFF and the other members of the COLLECTIVE CLASS were required to perform duties while eating.

FIRST CAUSE OF ACTION

Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")

(By PLAINTIFF and the COLLECTIVE CLASS and Against all DEFENDANTS)

34. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 33 of this Complaint.

35. DEFENDANTS are engaged in communication, business, and transmission throughout the United States and are, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

36. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful violations of the FLSA.

37. The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, states that an employee must be compensated for all hours worked, including all straight time compensation and overtime compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has concurrent jurisdiction over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. § 216.

38. Section 207(a) of the FLSA provides that:

Except as otherwise provided in this section, no employer shall employ any of his

1 employees who in any workweek is engaged in commerce or in the production of
2 goods for commerce, or is employed in an enterprise engaged in commerce or in the
3 production of goods for commerce, for a workweek longer than forty hours unless
4 such employee receives compensation for his employment in excess of the hours
5 above specified at a rate not less than one and one-half times the regular rate at which
6 he is employed.

7 39. Specifically, section 207(l) of the FLSA provides that:

8 No employer shall employ any employee in domestic service in one or more
9 households for a workweek longer than forty hours unless such employee receives
10 compensation for such employment in accordance with subsection (a).

11 40. The terms domestic service is defined by 29 CFR 552.3 as:

12 [S]ervices of a household nature performed by an employee in or about a private
13 home (permanent or temporary) of the person by whom he or she is employed. The
14 term includes employees such as cooks, waiters, butlers, valets, maids, housekeepers,
15 governesses, nurses, janitors, laundresses, caretakers, handymen, gardeners, footmen,
16 grooms, and chauffeurs of automobiles for family use. It also includes babysitters
17 employed on other than a casual basis.

18 41. PLAINTIFF and every other individual employed by DEFENDANTS as a Caregiver
19 or in other similarly situated positions was employed in domestic services in one or more
20 households. As a result, pursuant to section 207 of the FLSA and 29 CFR 552.3, PLAINTIFF and
21 every other individual employed by DEFENDANTS as a Caregiver or in other similarly situated
22 positions should have been paid at a rate of not less than one and one-half times the regular rate at
23 which they were employed for all hours worked longer than forty (40) in one workweek.

24 42. Section 213(a)(15) of the FLSA provides that the overtime pay requirement does not
25 apply to:

26
27 any employee employed on a casual basis in domestic service employment to provide
28 babysitting services or any employee employed in domestic service employment to

1 provide companionship services for individuals who (because of age or infirmity) are
2 unable to care for themselves (as such terms are defined and delimited by regulations
3 of the Secretary).

4 43. 29 CFR 552.5 provides:

5 [T]he term casual basis, when applied to babysitting services, shall mean
6 employment which is irregular or intermittent, and which is not performed by an
7 individual whose vocation is babysitting. Casual babysitting services may include the
8 performance of some household work not related to caring for the children: Provided,
9 however, [t]hat such work is incidental, i.e., does not exceed 20 percent of the total
10 hours worked on the particular babysitting assignment.

11 44. This exemption from overtime described in section 212(a)(15) of the FLSA and
12 29 CFR 552, et seq., would not apply to PLAINTIFF, nor to any other individual employed by
13 DEFENDANTS as a Caregiver or in other similarly situated positions because (a) the employment
14 of these employees was not at an irregular or intermittent rate and/or (b) the performance of
15 household work by PLAINTIFF and these employees that was not related to care of the individual
16 exceeded twenty percent (20%) of the particular assignment.

17 45. DEFENDANTS have willfully engaged in a widespread pattern and practice of
18 violating the provisions of the FLSA, as detailed above, by uniformly designating certain employees
19 as "exempt" employees, by their job title and without regard to DEFENDANTS' realistic
20 expectations and actual overall requirements of the job, including PLAINTIFF and the other
21 members of the COLLECTIVE CLASS who worked on the production side of the DEFENDANTS'
22 business enterprise. This was done in an illegal attempt to avoid payment of overtime wages and
23 other benefits in violation of the FLSA and Code of Federal Regulations requirements.

24 46. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, PLAINTIFF and
25 the members of the COLLECTIVE CLASS are entitled to compensation for all hours actually
26 worked, including time working during meal periods and compensation at a rate not less than one
27 and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in any
28 workweek.

1 47. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
2 exempt status of an employee. The exempt or nonexempt status of any particular employee must be
3 determined on the basis of whether the employee's salary and duties meet the requirements of the
4 regulations in this part.

5 48. The exemptions of the FLSA as listed in section 13(a)(15) do not apply to
6 PLAINTIFF and the other members of the COLLECTIVE CLASS, because their work consists of
7 non-management, manual, and production line labor.

8 49. For an employee to be exempt as a bona fide "executive," all the
9 following criteria must be met and DEFENDANTS have the burden of proving that:

10 (a) The employee's primary duty must be management of the enterprise, or of a
11 customarily recognized department or subdivision;

12 (b) The employee must customarily and regularly direct the work of at least two (2) or
13 more other employees;

14 (c) The employee must have the authority to hire and fire, or to command particularly
15 serious attention to his or his recommendations on such actions affecting other
16 employees; and,

17 (d) The employee must be primarily engaged in duties which meet the test of exemption.

18 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet the
19 requirements of being an "executive" under section 13 of the FLSA and 29 C.F.R. 541.100.

20 50. For an employee to be exempt as a bona fide "administrator," all of the
21 following criteria must be met and DEFENDANTS have the burden of proving that:

22 (a) The employee must perform office or non-manual work directly related to
23 management or general business operation of the employer or the employer's
24 customers;

25 (b) The employee must customarily and regularly exercise discretion and independent
26 judgment with respect to matters of significance; and,

27 (c) The employee must regularly and directly assist a proprietor or an exempt
28 administrator; or,

1 (d) The employee must perform under only general supervision, work requiring special
2 training, experience, or knowledge; and,

3 (e) The employee must be primarily engaged in duties which meet the test of exemption.

4 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to meet
5 the requirements for being an "administrator" under section 13(a) of the FLSA and 29 C.F.R.
6 541.202. PLAINTIFF and the other members of the COLLECTIVE CLASS perform their primary,
7 day to day duties without the requisite amount of discretion and independent judgment needed to
8 qualify for the administrative exemption. Further, PLAINTIFF and the other members of the
9 COLLECTIVE CLASS were not paid on a salary basis of not less than \$455 per week.

10 51. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other
11 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week and
12 were also required to perform duties that were primarily for the benefit of the employer during meal
13 periods.

14 52. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members
15 of the COLLECTIVE CLASS overtime compensation for the hours they have worked in excess of
16 the maximum hours permissible by law as required by section 7 of the FLSA, even though
17 PLAINTIFF and the other members of the COLLECTIVE CLASS, were regularly required to work,
18 and did in fact work overtime hours.

19 53. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members
20 of the COLLECTIVE CLASS, regular compensation for the hours they have worked, performing
21 duties primarily for the benefit of the employer during meal periods.

22 54. For purposes of the Fair Labor Standards Act, the employment practices of
23 DEFENDANTS were and are uniform throughout California in all respects material to the claims
24 asserted in this Complaint.

25 55. As a result of DEFENDANTS' failure to pay overtime compensation for hours
26 worked, as required by the FLSA, PLAINTIFF and the members of the COLLECTIVE CLASS were
27 damaged in an amount to be proved at trial.

28 56. PLAINTIFF, therefore, demands that she and the members of the COLLECTIVE

1 CLASS be paid overtime compensation as required by the FLSA for every hour of overtime worked
2 in any work week for which they were not compensated, straight wages for every hour worked
3 primarily for the benefit of DEFENDANTS during meal breaks for which they were not
4 compensated, liquidated damages, plus interest and attorneys' fees as provided by law.

5
6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Earned Wages and Overtime Compensation**

8 **[Cal. Lab. Code §§ 204, 210, 510, 1194, 1197 and 1198]**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against all Defendants)**

10 57. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 56 of this
12 Complaint.

13 58. Cal. Lab. Code § 204 requires employers to pay employees for all hours worked as
14 follows: "all wages... ..earned by any person in any employment are due and payable twice during
15 each calendar month, on days designated in advance by the employer as the regular paydays." Cal.
16 Lab. Code § 510 further provides that employees in California shall not be employed more than
17 eight (8) hours in any workday or forty (40) hours in a workweek or on a seventh (7th) consecutive
18 workday of a workweek unless they receive additional compensation beyond their regular wages in
19 amounts specified by law.

20 59. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor
21 is entitled to one day's rest therefrom in seven."

22 60. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to
23 work more than six days in seven."

24 61. Cal. Lab. Code § 1194 states:

25 Notwithstanding any agreement to work for a lesser wage, any employee receiving
26 less than the legal minimum wage or the legal overtime compensation applicable to
27 the employee is entitled to recover in a civil action the unpaid balance of the full
28

1 amount of this minimum wage or overtime compensation, including interest thereon,
2 reasonable attorney's fees, and costs of suit.

3 62. Cal. Lab. Code § 1198 provides:

4 The maximum hours of work and the standard conditions of labor fixed by the
5 commission shall be the maximum hours of work and the standard conditions of
6 labor for employees. The employment of any employee for longer hours than those
7 fixed by the order or under conditions of labor prohibited by the order is unlawful.

8 63. DEFENDANTS have intentionally and uniformly designated certain employees as
9 "exempt" from receiving wages for all hours worked and from receiving certain other rights, by
10 their job title and without regard to DEFENDANTS' realistic expectations, the requirements of the
11 job, and the method of payment made by DEFENDANTS, including PLAINTIFF and the other
12 members of the CALIFORNIA CLASS who worked on the production side of the DEFENDANTS'
13 business enterprise. This was done in an illegal attempt to avoid payment of regular and overtime
14 wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission
15 requirements.

16 64. Pursuant to Wage Order 15-2001, only employees whose primary job duties meet the
17 test of exemption as a(n) "executive," "administrator," "professional," or as a "personal attendant"
18 may be exempt from the provisions of the Wage Order that require the payment of minimum wage
19 and overtime. The primary job duties of the PLAINTIFF and the members of the CALIFORNIA
20 CLASS would not qualify these employees to meet any of these exemptions.

21 65. For an employee to be exempt as a bona fide "executive," all the following criteria
22 must be met and DEFENDANTS have the burden of proving that:

- 23 (a) The employee's primary duty must be management of the enterprise, or of a
24 customarily recognized department or subdivision; and,
25 (b) The employee must customarily and regularly direct the work of at least two (2) or
26 more other employees; and,
27 (c) The employee must have the authority to hire and fire, or to command particularly
28 serious attention to his or his recommendations on such actions affecting other

employees; and,

(d) The employee must customarily and regularly exercise discretion and independent judgment; and,

(e) The employee must be primarily engaged in duties which meet the test of exemption.

No member of the CALIFORNIA CLASS was or is an executive because they all fail to meet the requirements of being an "executive" within the meaning of Order No. 15-2001.

66. For an employee to be exempt as a bona fide "administrator," all of the following criteria must be met and DEFENDANTS have the burden of proving that:

(a) The employee must perform office or non-manual work directly related to management policies or general business operation of the employer; and,

(b) The employee must customarily and regularly exercise discretion and independent judgment; and,

(c) The employee must regularly and directly assist a proprietor or an exempt administrator; or,

(d) The employee must perform, under only general supervision, work requiring special training, experience, or knowledge, or,

(e) The employee must execute special assignments and tasks under only general supervision; and,

(f) The employee must be primarily engaged in duties which meet the test of exemption.

No member of the CALIFORNIA CLASS was or is an administrator because they all fail to meet the requirements for being an "administrator" under Order No. 15-2001.

67. The Industrial Welfare Commission, ICW Wage Order 15-2001 also sets forth the requirements which must be complied with to place an employee in the "professional" exempt category. For an employee to be exempt as a bona fide professional, all the following criteria must be met:

(a) The employee must primarily perform work that is intellectual or creative and that requires the exercise of discretion and independent judgment.

(b) The employee must be licensed or certified by the state of California and is

1 primarily engaged in the practice of one of the following recognized
2 professions: law, medicine, dentistry, optometry, architecture, engineering,
3 teaching or accounting.

4 No member of the CALIFORNIA CLASS was or is a professional because they all fail to meet the
5 requirements for being an "professional" under Order No. 15-2001.

6 68. PLAINTIFF, and other members of the CALIFORNIA CLASS, do not fit the
7 definition of an exempt executive, administrative, or professional employee because:

8 (a) These employees performed no managerial or
9 administrative (exempt) duties;

10 (b) Their work hours are spent performing non-exempt duties, including but not
11 limited to performing manual labor;

12 (c) They do not have the discretion or independent judgment, in that they must follow
13 exacting and comprehensive company-wide policies and procedures which dictate
14 every aspect of their work day;

15 (d) They do not have the authority to hire and/or fire other personnel; and,

16 (e) PLAINTIFF and the other members of the CALIFORNIA CLASS did not earn a
17 monthly salary equivalent to two (2) times the state minimum wage for full-time
18 employment.

19 69. PLAINTIFF, and other members of the CALIFORNIA CLASS, are not personal
20 attendants within the meaning of the Wage Order because a significant amount of work, i.e. more
21 than 20% of their weekly time, is spent performing certain general housekeeping duties without the
22 assistance of the client. As shown by Exhibit 1, the PLAINTIFF and members of the CALIFORNIA
23 CLASS are required to, without the participation of the client: (a) cook breakfast, lunch and dinner;
24 (b) run errands, which includes grocery shopping and picking up prescriptions; (c) perform
25 homemaking, which includes laundry/washing/drying/folding; (d) clean the restroom, which
26 includes the toilet, sink, bathtub/shower, emptying of the trash, sweeping/mopping the floor; (e)
27 clean the kitchen, which includes cleaning the sink, washing the dishes, wiping the counter, wiping
28 the stove top, wiping the refrigerator, cleaning the inside of the microwave, loading the dishwasher,

1 emptying the dishwasher, sweep/mopping the floor, emptying the trash; (f) clean the living area,
2 which includes vacuuming, dusting, changing bed linens, wiping mirrors; and (g) pet care.

3 70. During the class period, the PLAINTIFF, and other members of the CALIFORNIA
4 CLASS, worked more than eight (8) hours in a workday and/or forty (40) hours in a work week
5 and/or on the seventh (7th) consecutive day of a workweek.

6 71. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members
7 of the CALIFORNIA CLASS, overtime compensation for the hours they worked in excess of the
8 maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, *et seq.* and the
9 Wage Order, even though PLAINTIFF, and the other members of the CALIFORNIA CLASS,
10 worked regular hours at the private households of DEFENDANTS' clients, and did in fact work
11 overtime hours for DEFENDANTS.

12 72. By virtue of DEFENDANTS' unlawful failure to pay additional compensation to the
13 PLAINTIFF, and the other members of the CALIFORNIA CLASS, for their overtime hours, the
14 PLAINTIFF, and the other members of the CALIFORNIA CLASS, have suffered, and will continue
15 to suffer, an economic injury in amounts which are presently unknown to them and which will be
16 ascertained according to proof at trial.

17 73. DEFENDANTS knew or should have known that PLAINTIFF, and the other
18 members of the CALIFORNIA CLASS, were misclassified as exempt from wages and
19 DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance,
20 not to pay them for their labor as a matter of uniform corporate policy, practice and procedure.

21 74. Therefore, PLAINTIFF, and the other members of the CALIFORNIA CLASS,
22 request recovery of regular and overtime compensation according to proof, interest, attorney's fees
23 and cost pursuant to Cal. Lab. Code § 1194(a), as well as the assessment of any statutory penalties
24 against DEFENDANTS, in a sum as provided by the Cal. Lab. Code and/or other statutes. Further,
25 PLAINTIFF, and the other members of the CALIFORNIA CLASS, are entitled to seek and recover
26 reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §1194.

27 75. In performing the acts and practices herein alleged in violation of labor laws and
28 refusing to provide the requisite overtime compensation, the DEFENDANTS acted and continue to

1 act intentionally, oppressively, and maliciously toward the PLAINTIFF, and toward the other
2 members of the CALIFORNIA CLASS, with a conscious and utter disregard of their legal rights, or
3 the consequences to them, and with the despicable intent of depriving them of their property and
4 legal rights and otherwise causing them injury in order to increase corporate profits at the expense of
5 PLAINTIFF and the members of the Class.

6
7 **THIRD CAUSE OF ACTION**

8 **For Failure to Pay Wages When Due**

9 **[Cal. Lab. Code § 203]**

10 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

11 76. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by reference, as though fully set forth herein, paragraphs 1 through 75 of this Complaint.

13 77. Cal. Lab. Code § 200 provides that:

14 As used in this article:

15 (a) "Wages" includes all amounts for labor performed by employees of every
16 description, whether the amount is fixed or ascertained by the standard of time, task,
17 piece, commission basis, or other method of calculation.

18 (b) "Labor" includes labor, work, or service whether rendered or performed under
19 contract, subcontract, partnership, station plan, or other agreement if the labor to be
20 paid for is performed personally by the person demanding payment.

21 78. Cal. Lab. Code § 202 provides, in relevant part, that:

22 If an employee not having a written contract for a definite period quits his or her
23 employment, his or her wages shall become due and payable not later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or her
25 intention to quit, in which case the employee is entitled to his or her wages at the
26 time of quitting. Notwithstanding any other provision of law, an employee who quits
27 without providing a 72-hour notice shall be entitled to receive payment by mail if he
28 or she so requests and designates a mailing address. The date of the mailing shall

1 constitute the date of payment for purposes of the requirement to provide payment
2 within 72 hours of the notice of quitting.

3 79. Cal. Lab. Code § 203 provides:

4 If an employer willfully fails to pay, without abatement or reduction, in accordance
5 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
6 discharged or who quits, the wages of the employee shall continue as a penalty from
7 the due date thereof at the same rate until paid or until an action therefor is
8 commenced; but the wages shall not continue for more than 30 days.

9 80. Many of the CALIFORNIA CLASS members have terminated their employment and
10 DEFENDANTS have not tendered payment of wages owed.

11 81. Therefore, as provided by Cal lab. Code § 203, on behalf of herself and the
12 members of the CALIFORNIA CLASS, PLAINTIFF demands thirty days of pay as penalty for not
13 paying all wages due at time of termination for all employees who terminated employment during
14 the CALIFORNIA CLASS PERIOD and demands an accounting and payment of all wages due,
15 plus interest.

16
17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Accurate Itemized Statements**

19 **[Cal. Lab. Code § 226]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)**

21 82. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 81 of this
23 Complaint.

24 83. Cal. Labor Code § 226 provides that an employer must furnish employees with an
25 "accurate itemized statement in writing showing:

26 (1) gross wages earned,

27 (2) total hours worked by the employee, except for any employee whose compensation is
28 solely based on a salary and who is exempt from payment of overtime under subdivision (a)

1 of Section 515 or any applicable order of the Industrial Welfare Commission,
2 (3) the number of piecerate units earned and any applicable piece rate if the employee is paid
3 on a piece-rate basis,
4 (4) all deductions, provided that all deductions made on written orders of the employee may
5 be aggregated and shown as one item,
6 (5) net wages earned,
7 (6) the inclusive dates of the period for which the employee is paid,
8 (7) the name of the employee and his or her social security number, except that by January 1,
9 2008, only the last four digits of his or her social security number or an employee
10 identification number other than a social security number may be shown on the itemized
11 statement,
12 (8) the name and address of the legal entity that is the employer, and
13 (9) all applicable hourly rates in effect during the pay period and the corresponding number
14 of hours worked at each hourly rate by the employee.”

15 84. At all times relevant herein, DEFENDANTS violated Labor Code § 226,
16 in that DEFENDANTS failed to properly and accurately itemize the number of hours worked by
17 PLAINTIFF, and the other members of the CALIFORNIA CLASS at the effective regular rates of
18 pay and the effective overtime rates of pay.

19 85. Both the Wage Order at Section 7 and California Code of Regulations § 11150(7)
20 further require that every employer to do the following:

21 Every employer shall keep accurate information with respect to each employee
22 including the following:

- 23 (1) Full name, home address, occupation and social security number.
24 (2) Birth date, if under 18 years, and designation as a minor.
25 (3) Time records showing when the employee begins and ends each work period. Meal
26 periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods
27 during which operations cease and authorized rest periods need not be recorded.
28 (4) Total wages paid each payroll period, including value of board, lodging, or other

1 compensation actually furnished to the employee.

2 (5) Total hours worked in the payroll period and applicable rates of pay. This information
3 shall be made readily available to the employee upon reasonable request.

4 (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the
5 incentive plan formula shall be provided to employees. An accurate production record shall
6 be maintained by the employer.

7 86. At all times relevant herein, DEFENDANTS violated Section 7 of the Wage Order
8 and California Code of Regulations § 11150(7) in that DEFENDANTS failed to properly and
9 accurately maintain information of the PLAINTIFF and other members of the CALIFORNIA
10 CLASS, consisting of time records showing when the employee begins and ends each work period
11 and the total hours worked in the payroll period with applicable rates of pay. Further,
12 DEFENDANTS failed to make such information available to employees.

13 87. DEFENDANTS knowingly and intentionally failed to comply with Labor Code §§
14 226, Section 7 of the Wage Order, and California Code of Regulations § 11150(7), causing
15 economic injury to PLAINTIFF, and the other members of the CALIFORNIA CLASS. These
16 damages include, but are not limited to, costs expended calculating the true hours worked and the
17 amount of employment taxes which were not properly paid to state and federal tax authorities.
18 These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members of the
19 CLASS are entitled to recover liquidated damages of \$50.00 for the initial pay period in which the
20 violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code
21 § 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00 for
22 PLAINTIFF and each respective member of the CALIFORNIA CLASS herein) plus reasonable
23 attorney's fees and costs pursuant to Labor Code § 226(g).

24
25
26
27 **FIFTH CAUSE OF ACTION**

28 **For Failure to Provide Meal and/or Rest Periods**

[Cal. Lab. Code §§ 226.7 and 512]

(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)

88. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 87 of this Complaint.

89. Cal. Lab. Code § 512 provides, in relevant part: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

90. Section 11 of the Order 15-2001 of the Industrial Wage Commission (the "Wage Order") provides, in relevant part:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period,

the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

91. Section 12 of Order 15-2001 of the Industrial Wage Commission (the "Wage Order") provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

92. Cal. Lab. Code § 226.7 provides:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

93. DEFENDANTS have intentionally and improperly failed to provide all rest and/or meal periods without any work or duties to PLAINTIFF and the other members of the CALIFORNIA CLASS who worked more than three and one half hours (3 ½) per day, and by failing to do so DEFENDANTS violated the provisions of Labor Code 226.7.

94. Therefore, PLAINTIFF demands on behalf of herself and the members of the CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not provided for each four (4) hours of work during the period commencing on the date that is within four years prior to the filing of this Complaint and one (1) hour of pay for each five (5) hours of work in which a meal period was not provided.

SIXTH CAUSE OF ACTION

For Unlawful, Unfair and Deceptive Business Practices

[Cal. Bus. And Prof. Code § 17200 *et seq.*]

(By PLAINTIFF and the CLASS and against All DEFENDANTS)

95. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 94 of this Complaint.

96. DEFENDANTS are "persons" as that term is defined under California Business & Professions Code § 17021.

97. California Business & Professions Code § 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

98. By the conduct alleged hereinabove in the First through Fifth Claims for Relief, DEFENDANTS have violated the provisions of the Wage Orders, the Fair Labor Standards Act, 29 USC § 201, the REGULATIONS, the California Labor Code, the Code of Federal Regulations and

1 the California Code of Regulations, *et seq.*, for which this Court should issue equitable and
2 injunctive relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
3 wrongfully withheld or labor taken without proper compensation.

4 99. By and through the unfair and unlawful business practices described hereinabove,
5 DEFENDANTS have obtained valuable property, money, and services from the PLAINTIFF, and
6 the other members of the CLASS, and has deprived them of valuable rights and benefits guaranteed
7 by law, all to their detriment and to the benefit of DEFENDANTS so as to allow DEFENDANTS to
8 unfairly compete.

9 100. All the acts described herein as violations of, among other things, the Cal. Lab. Code,
10 California Code of Regulations, and the Industrial Welfare Commission Wage Orders, are unlawful
11 and in violation of public policy, are immoral, unethical, oppressive, and unscrupulous, and thereby
12 constitute unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200 *et*
13 *seq.*

14 101. PLAINTIFF, and the other members of the CLASS, are further entitled to, and do,
15 seek a declaration that the above described business practices are unfair and unlawful and that an
16 injunctive relief should be issued restraining DEFENDANTS from engaging in any of these unfair
17 and unlawful business practices in the future.

18 102. PLAINTIFF, and the other members of the CLASS, have no plain, speedy, and/or
19 adequate remedy at law that will end the unfair and unlawful business practices of DEFENDANTS.
20 Further, the practices herein alleged presently continue to occur unabated. As a result of the unfair
21 and unlawful business practices described above, PLAINTIFF, and the other members of the
22 CLASS, have suffered and will continue to suffer irreparable harm unless DEFENDANTS are
23 restrained from continuing to engage in these unfair and unlawful business practices. In addition,
24 DEFENDANTS should be required to disgorge the unpaid moneys to PLAINTIFF, and the other
25 members of the CLASS.

26
27 **PRAYER**

28 WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and severally,

1 as follows:

- 2 A) Compensatory damages, according to proof at trial due PLAINTIFF and the other
3 members of the COLLECTIVE CLASS and CALIFORNIA CLASS, during the
4 applicable COLLECTIVE CLASS PERIOD and CALIFORNIA CLASS PERIOD
5 plus interest thereon at the statutory rate;
- 6 B) Restitution, according to proof at trial, due PLAINTIFF and the other members of the
7 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
8 interest thereon at the statutory rate;
- 9 C) One (1) hour of pay for each workday in which a meal period was not provided to
10 PLAINTIFF and each member of the CALIFORNIA CLASS for each four (4) hours
11 of work during the period commencing on the date that is within four years prior to
12 the filing of this Complaint;
- 13 D) An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 15 E) An order requiring DEFENDANTS to provide an accounting of all hours worked, all
16 wages, and all sums unlawfully withheld from compensation due to PLAINTIFF and
17 the other members of the COLLECTIVE and CALIFORNIA CLASSES;
- 18 F) Imposition of a constructive trust upon the assets of the DEFENDANTS to the extent
19 of the sums due to PLAINTIFF and to the other members of the COLLECTIVE and
20 CALIFORNIA CLASSES;
- 21 G) An award of interest, including prejudgment interest at the legal rate;
- 22 H) An award of liquidated damages, statutory damages, including reasonable attorneys'
23 fees and cost of suit, but only to the extent that such reasonable attorneys' fees and
24 costs are recoverable pursuant to Cal. Lab. Code §1194 or the FLSA at 29 U.S.C.
25 §216. Neither this prayer nor any other allegation or prayer in this Complaint is to be
26 construed as a request, under any circumstance, that would result in a request for
27 attorneys' fees or costs available under Cal. Lab. Code § 218.5;
- 28 I) For liquidated damages pursuant to 29 U.S.C. § 216(b); and,

1 K) Such other and further relief as the Court deems just and proper.

2 Dated: July 31, 2008

3 ~~BLUMENTHAL & NORDREHAUG~~

4 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

5 UNITED EMPLOYEES LAW GROUP
6 Walter Haines, Esq.
7 65 Pine Ave, #312
8 Long Beach, CA 90802
9 Telephone: (562) 256-1047
10 Facsimile: (562) 256-1006
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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on issues triable to a jury.

Dated: July 31, 2008

~~BLUMENTHAL & NORDREHAUG~~

By: 

Norman B. Blumenthal
Attorneys for Plaintiff

UNITED EMPLOYEES LAW GROUP
Walter Haines, Esq.
65 Pine Ave, #312
Long Beach, CA 90802
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS ANGELA PITTARD, on behalf of herself, and on behalf of all persons similarly situated, Los Angeles

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

BLUMENTHAL & NORDREHAUG, 2255 Calle Clara, La Jolla, California 92037

DEFENDANTS ORANGE COUNTY HOMECARE, a California limited liability corporation, doing business as SALUS HOMECARE and SALUS HEALTHCARE, and, County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF LAND INVOLVED.

Attorneys (If Known)

08 CV 1398 J WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 USC 201, et seq

Brief description of cause: Class Action Complaint for Unpaid Overtime

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/25/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 153537 AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

TAC 8/1/08

CR

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

153537 - TC

**August 01, 2008
09:49:17**

Civ Fil Non-Pris

USAO #: 08CV1398

Judge...: NAPOLEON A JONES, JR

Amount.: \$350.00 CK

Check#: BC11405

Total-> \$350.00

FROM: ANGELA PITTARD

VS

ORANGE COUNTY HOMECARE